

AMENDED IN ASSEMBLY AUGUST 17, 2011

AMENDED IN ASSEMBLY JULY 14, 2011

SENATE BILL

No. 226

Introduced by Senators Simitian and Vargas

February 9, 2011

An act to amend Section 65919.10 of the Government Code, and to amend Sections ~~21081.2~~, 21083.9, 21084, and 21177 of, to add Sections ~~21080.35 and 21155.4~~ *Section 21080.35* to, and to add and repeal ~~Section 21084.2~~ *Sections 21084.2 and 21155.4* of, the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 226, as amended, Simitian. Environmental quality.

(1) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect.

This bill would exempt from the requirements of CEQA ~~projects consisting of the installation of a solar panels energy system, including associated equipment,~~ on the roof of ~~a commercial or industrial~~ *an existing* building meeting specified conditions. Because a lead agency would be required to determine whether a project would be exempt under this provision, this bill would impose a state-mandated local program.

CEQA

(2) *CEQA* requires a lead agency to call a scoping meeting for a project of statewide, regional, or areawide significance, and requires the lead agency to provide notice of at least one of those scoping meetings to specified entities, including a county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and county or city. Existing law requires, prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency to refer the proposed action to a city or county within or abutting the area covered by the proposal.

This bill would authorize this referral of a proposed action to adopt or substantially amend a general plan of a city or county to be conducted concurrently with the scoping meeting. The city or county would be authorized to submit specified comments at the scoping meeting.

(2)

(3) *CEQA* authorizes the Secretary of the Natural Resources Agency to certify and adopt guidelines to include a list of classes of projects that have been determined not to have a significant effect on the environment and are exempted from the requirements of *CEQA* (categorical exemption).

This bill would provide that a project's greenhouse gas emissions are not, in and of themselves, deemed to cause the exemption to be inapplicable under specified conditions.

This bill would also require the Secretary of the Natural Resources Agency, on or before March 1, 2012, to adopt a categorical exemption for solar photovoltaic projects located on disturbed agricultural lands meeting specified conditions. Because a lead agency would be required to determine whether the categorical exemption would apply to a project, this bill would impose a state-mandated local program. The bill would repeal this requirement on January 1, 2015.

~~(3) *CEQA* exempts from its requirements a transit priority project meeting specified requirements if a legislative body declares after conducting a public hearing that the project is a sustainable communities project. *CEQA* also exempts an urban infill project meeting specified conditions from certain requirements.~~

~~This bill would exempt an urban infill project located in a jurisdiction for which a sustainable communities strategy has been adopted by the metropolitan planning organization for that jurisdiction and that is a transit priority project that has been declared to be a sustainable communities project. Because a lead agency would be required to~~

~~determine whether the exemption applies, this bill would impose a state-mandated local program.~~

(4) CEQA authorizes the use of a sustainable communities environmental assessment or modified environmental impact report for the purposes of CEQA for a transit priority project meeting specified requirements.

This bill would authorize, until the adoption *by a metropolitan planning organization* of a sustainable communities strategy, the use of a sustainable communities environmental assessment or modified environmental impact report for a transit proximity project meeting specified conditions. *This bill would repeal this authorization on January 1, 2015.*

(5) CEQA prohibits a person from bringing or maintaining an action or proceeding unless the alleged grounds for noncompliance with CEQA were presented to the public agency during the public comment period or before the close of the public hearing on the project before the issuance of the notice of determination.

This bill would authorize, until January 1, 2016, with specified exceptions, a lead agency to not consider written materials submitted after the close of the public comment period and would prohibit the use of those materials as a basis for challenging the lead agency's action pursuant to CEQA.

(6) Existing law authorizes a county and a city to agree upon a procedure for referral to, and comment by, the city or county concerning the other entity's proposals to adopt or amend all or part of a general or specific plan or zoning ordinance, as specified.

This bill would make a technical, nonsubstantive change to this authorization.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) In 2008, the Legislature passed and the Governor signed Senate Bill 375, which was chaptered as Chapter 726 of the Statutes of 2008, requiring metropolitan planning organizations to adopt a sustainable community strategy that will comprehensively integrate land use planning, transportation investments, and climate policy. Part of Chapter 726 of the Statutes of 2008 includes incentives under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) to encourage development patterns that would help implement the sustainable communities strategy.

(b) Metropolitan planning organizations will begin adopting these strategies in 2011, but adoption will not be complete until 2013.

(c) One of the incentives created under Chapter 726 of the Statutes of 2008 is the sustainable communities environmental assessment that provides a more expeditious review under the California Environmental Quality Act for residential and mixed-use residential projects that have a proximity to transit.

(d) Because of the severe recession that continues to impact California and because of the need to promote jobs in the construction industry, it is important to make the sustainable communities assessment available as early as possible in order to promote the construction of projects that will foster the use of transit.

SEC. 2. Section 65919.10 of the Government Code is amended to read:

65919.10. If the proposed action is a change in a zoning ordinance, the county or city need not refer the zoning proposal to an affected city or county, as the case may be, if the zoning proposal is consistent with the general plan and the general plan proposal was referred and acted upon pursuant to this chapter.

SEC. 3. Section 21080.35 is added to the Public Resources Code, to read:

21080.35. ~~This~~ (a) *Except as provided in subdivision (d), this division does not apply to a project consisting of the installation*

1 ~~of solar photovoltaic panels on the roof of a commercial or~~
2 ~~industrial building that meets both of the following conditions:~~

3 ~~(a) The maximum electrical generating capacity of the project~~
4 ~~is not more than three megawatts.~~

5 ~~(b) The control equipment for the solar panels will be located~~
6 ~~inside the commercial or industrial building. the installation of a~~
7 ~~solar energy system on the roof of an existing building.~~

8 *(b) For the purposes of this section, a “solar energy system”*
9 *includes all associated equipment. Associated equipment consists*
10 *of parts and materials that enable the generation and use of solar*
11 *electricity or solar-heated water, including any monitoring and*
12 *control, safety, conversion, and emergency responder equipment,*
13 *as well as any equipment necessary to connect the energy*
14 *generated to the electrical grid. “Associated equipment” does not*
15 *include a substation.*

16 *(c) (1) Except for the associated equipment necessary to connect*
17 *the energy generated to the electrical grid, which may be located*
18 *immediately adjacent to the parcel of the building, associated*
19 *equipment shall be located on the same parcel of the building.*

20 *(2) Associated equipment shall not occupy more than 500 square*
21 *feet of ground surface or disturb water bodies, plants identified*
22 *as rare pursuant to Chapter 10 (commencing with Section 1900)*
23 *of Division 2 of the Fish and Game Code, wetlands, or riparian*
24 *areas.*

25 *(d) This section does not apply if the associated equipment*
26 *would otherwise require one of the following:*

27 *(1) An individual federal permit pursuant to Section 401 or 404*
28 *of the federal Clean Water Act (33 U.S.C. Sec. 1341 or 1344) or*
29 *waste discharge requirements pursuant to the Porter-Cologne*
30 *Water Quality Control Act (Division 7 (commencing with Section*
31 *13000) of the Water Code).*

32 *(2) An individual take permit for species protected under the*
33 *federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et*
34 *seq.) or the California Endangered Species Act (Chapter 1.5*
35 *(commencing with Section 2050) of Division 3 of the Fish and*
36 *Game Code).*

37 *(3) A streambed alteration permit pursuant to Chapter 6*
38 *(commencing with Section 1600) of Division 2 of the Fish and*
39 *Game Code.*

1 ~~SEC. 4. Section 21081.2 of the Public Resources Code is~~
2 ~~amended to read:~~

3 ~~21081.2. (a) Except as provided in subdivision (c) or (g), if a~~
4 ~~residential project, not exceeding 100 units, with a minimum~~
5 ~~residential density of 20 units per acre and within one-half mile~~
6 ~~of a transit stop, on an infill site in an urbanized area is in~~
7 ~~compliance with the traffic, circulation, and transportation policies~~
8 ~~of the general plan, applicable community plan, applicable specific~~
9 ~~plan, and applicable ordinances of the city or county with~~
10 ~~jurisdiction over the area where the project is located, and the city~~
11 ~~or county requires that the mitigation measures approved in a~~
12 ~~previously certified project area environmental impact report~~
13 ~~applicable to the project be incorporated into the project, the city~~
14 ~~or county is not required to comply with subdivision (a) of Section~~
15 ~~21081 with respect to the making of any findings regarding the~~
16 ~~impacts of the project on traffic at intersections, or on streets,~~
17 ~~highways, or freeways.~~

18 ~~(b) Subdivision (a) does not restrict the authority of a city or~~
19 ~~county to adopt feasible mitigation measures with respect to the~~
20 ~~impacts of a project on pedestrian and bicycle safety.~~

21 ~~(c) Subdivision (a) does not apply in any of the following~~
22 ~~circumstances:~~

23 ~~(1) The application for a proposed project is made more than~~
24 ~~five years after certification of the project area environmental~~
25 ~~impact report applicable to the project.~~

26 ~~(2) A major change has occurred within the project area after~~
27 ~~certification of the project area environmental impact report~~
28 ~~applicable to the project.~~

29 ~~(3) The project area environmental impact report applicable to~~
30 ~~the project was certified with overriding considerations pursuant~~
31 ~~to subdivision (b) of Section 21081 to the significant impacts on~~
32 ~~the environment with respect to traffic or transportation.~~

33 ~~(4) The proposed project covers more than four acres.~~

34 ~~(d) A project shall not be divided into smaller projects in order~~
35 ~~to qualify pursuant to this section.~~

36 ~~(e) This section does not relieve a city or county from the~~
37 ~~requirement to analyze the project's effects on traffic at~~
38 ~~intersections, or on streets, highways, or freeways, or from making~~
39 ~~a determination that the project may have a significant effect on~~
40 ~~traffic.~~

1 (f) For the purposes of this section, “project area environmental
2 impact report” means an environmental impact report certified on
3 any of the following:

4 (1) A general plan.

5 (2) A revision or update to the general plan that includes at least
6 the land use and circulation elements.

7 (3) An applicable community plan.

8 (4) An applicable specific plan.

9 (5) A housing element of the general plan, if the environmental
10 impact report analyzed the environmental effects of the density of
11 the proposed project.

12 (6) A zoning ordinance.

13 (g) This section does not apply to a residential project located
14 in a jurisdiction for which a sustainable community strategy has
15 been adopted by the metropolitan planning organization of that
16 jurisdiction pursuant to Section 65080 of the Government Code
17 that qualifies as a transit priority project, in which case, Section
18 21155.1 shall apply.

19 ~~SEC. 5.~~

20 *SEC. 4.* Section 21083.9 of the Public Resources Code is
21 amended to read:

22 21083.9. (a) Notwithstanding Section 21080.4, 21104, or
23 21153, a lead agency shall call at least one scoping meeting for
24 either of the following:

25 (1) A proposed project that may affect highways or other
26 facilities under the jurisdiction of the Department of Transportation
27 if the meeting is requested by the department. The lead agency
28 shall call the scoping meeting as soon as possible, but not later
29 than 30 days after receiving the request from the Department of
30 Transportation.

31 (2) A project of statewide, regional, or areawide significance.

32 (b) The lead agency shall provide notice of at least one scoping
33 meeting held pursuant to paragraph (2) of subdivision (a) to all of
34 the following:

35 (1) A county or city that borders on a county or city within
36 which the project is located, unless otherwise designated annually
37 by agreement between the lead agency and the county or city.

38 (2) A responsible agency.

39 (3) A public agency that has jurisdiction by law with respect to
40 the project.

1 (4) A transportation planning agency or public agency required
2 to be consulted pursuant to Section 21092.4.

3 (5) An organization or individual who has filed a written request
4 for the notice.

5 (c) For an entity, organization, or individual that is required to
6 be provided notice of a lead agency public meeting, the requirement
7 for notice of a scoping meeting pursuant to subdivision (b) may
8 be met by including the notice of a scoping meeting in the public
9 meeting notice.

10 (d) A scoping meeting that is held in the city or county within
11 which the project is located pursuant to the federal National
12 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.)
13 and the regulations adopted pursuant to that act shall be deemed
14 to satisfy the requirement that a scoping meeting be held for a
15 project subject to paragraph (2) of subdivision (a) if the lead agency
16 meets the notice requirements of subdivision (b) or subdivision
17 (c).

18 (e) The referral of a proposed action to adopt or substantially
19 amend a general plan to a city or county pursuant to paragraph (1)
20 of subdivision (a) of Section 65352 of the Government Code may
21 be conducted concurrently with the scoping meeting required
22 pursuant to this section, and the city or county may submit its
23 comments as provided pursuant to subdivision (b) of that section
24 at the scoping meeting.

25 ~~SEC. 6.~~

26 *SEC. 5.* Section 21084 of the Public Resources Code is
27 amended to read:

28 21084. (a) The guidelines prepared and adopted pursuant to
29 Section 21083 shall include a list of classes of projects that have
30 been determined not to have a significant effect on the environment
31 and that shall be exempt from this division. In adopting the
32 guidelines, the Secretary of the Natural Resources Agency shall
33 make a finding that the listed classes of projects referred to in this
34 section do not have a significant effect on the environment.

35 (b) A project's greenhouse gas emissions shall not, in and of
36 themselves, be deemed to cause an exemption adopted pursuant
37 to subdivision (a) to be inapplicable if the project complies with
38 all applicable regulations or requirements adopted to implement
39 statewide, regional, or local plans consistent with Section 15183.5
40 of Title 14 of the California Code of Regulations.

1 (c) A project that may result in damage to scenic resources,
2 including, but not limited to, trees, historic buildings, rock
3 outcroppings, or similar resources, within a highway designated
4 as an official state scenic highway, pursuant to Article 2.5
5 (commencing with Section 260) of Chapter 2 of Division 1 of the
6 Streets and Highways Code, shall not be exempted from this
7 division pursuant to subdivision (a). This subdivision does not
8 apply to improvements as mitigation for a project for which a
9 negative declaration has been approved or an environmental impact
10 report has been certified.

11 (d) A project located on a site that is included on any list
12 compiled pursuant to Section 65962.5 of the Government Code
13 shall not be exempted from this division pursuant to subdivision
14 (a).

15 (e) The changes made to this section by Chapter 1212 of the
16 Statutes of 1991 apply only to projects for which applications have
17 not been deemed complete on or before January 1, 1992, pursuant
18 to Section 65943 of the Government Code.

19 (f) A project that may cause a substantial adverse change in the
20 significance of an historical resource, as specified in Section
21 21084.1, shall not be exempted from this division pursuant to
22 subdivision (a).

23 ~~SEC. 7.~~

24 *SEC. 6.* Section 21084.2 is added to the Public Resources Code,
25 to read:

26 21084.2. (a) On or before March 1, 2012, the Secretary of the
27 Natural Resources Agency shall amend the guidelines adopted
28 pursuant to Section 21084 to add solar photovoltaic projects that
29 are located on disturbed agricultural lands to the classes of projects
30 that have been determined not to have a significant effect on the
31 environment and that are therefore exempt from this division. The
32 amendment shall be limited to projects that meet all the following
33 conditions:

34 (1) The project has a maximum electrical generating capacity
35 of not more than 10 megawatts.

36 (2) The project is located exclusively on lands *previously used*
37 *for agricultural production for at least five years* that have been
38 mechanically disturbed or converted from native vegetation through
39 plowing, bulldozing, or other similar means.

1 (3) *The project is not located on prime farmland, farmland of*
2 *statewide importance, unique farmland, and farmland of local*
3 *importance, collectively designated as important farmlands by the*
4 *Department of Conservation.*

5 ~~(3)~~

6 (4) *The project is located exclusively on land that, based upon*
7 *generally accepted biological survey or assessment methods, has*
8 *been determined to have diminished in a report of a qualified*
9 *biologist on file with the agency to have no significant value as*
10 *habitat for endangered, threatened, candidate, and other sensitive*
11 *species, and that provides no significant habitat or wildlife*
12 *corridors.*

13 ~~(4)~~

14 (5) *The project is located on a parcel of land that is not larger*
15 *than 100 acres.*

16 (b) (1) *For the purposes of this section, a “photovoltaic project”*
17 *includes all associated equipment. Associated equipment consists*
18 *of parts and materials that enable the generation and use of solar*
19 *electricity or solar-heated water, including any monitoring and*
20 *control, safety, conversion, and emergency responder equipment,*
21 *as well as any equipment necessary to connect the energy*
22 *generated to the electrical grid. “Associated equipment” does not*
23 *include a substation.*

24 (2) (A) *Except for the associated equipment necessary to*
25 *connect the energy generated to the electrical grid, which may be*
26 *located immediately adjacent to the parcel, associated equipment*
27 *shall be located on the same parcel.*

28 (B) *Associated equipment shall not occupy more than 500 square*
29 *feet of ground surface or disturb water bodies, plants identified*
30 *as rare pursuant to Chapter 10 (commencing with Section 1900)*
31 *of Division 2 of the Fish and Game Code, wetlands, or riparian*
32 *areas.*

33 ~~(b)~~

34 (c) *In adopting an amendment pursuant to this section, the*
35 *Secretary of the Natural Resources Agency shall take into*
36 *consideration the potential for impacts on agriculture and natural*
37 *resources, and may impose additional conditions on the exemption*
38 *in order to avoid any significant effects on the environment,*
39 *including any effects associated with the decommissioning of the*
40 *project. The Secretary of the Natural Resources Agency shall*

1 *impose conditions to prevent the repeated application of the class*
2 *of exemption provided pursuant to this section to facilities in the*
3 *same vicinity and under forms of common ownership or control.*

4 ~~(e)~~

5 *(d) This section shall remain in effect only until January 1, 2015,*
6 *and as of that date is repealed, unless a later enacted statute, that*
7 *is enacted before January 1, 2015, deletes or extends that date.*

8 ~~SEC. 8.~~

9 *SEC. 7.* Section 21155.4 is added to the Public Resources Code,
10 to read:

11 21155.4. (a) A transit proximity project that (1) includes a
12 major transit stop as part of the project, or (2) that is located within
13 one-quarter mile of an existing major transit stop or an existing
14 high-quality transit corridor may be reviewed under the procedures
15 set forth in subdivision (b) or (c) of Section 21155.2 if the project
16 has incorporated all mitigation measures or best practices
17 recommended for protection of public health by the local air
18 district, air pollution control district, or air quality management
19 district.

20 (b) For purposes of this section, a transit proximity project is
21 one that satisfies paragraphs (1) and (2) of subdivision (b) of
22 Section 21155 and is located within an urbanized area.

23 (c) For the purpose of this section, the following definitions
24 apply:

25 (1) “Major transit stop” has the same meaning as set forth in
26 Section 21064.3.

27 (2) “High-quality transit corridor” has the same meaning as set
28 forth in subdivision (b) of Section 21155.

29 (3) This section shall apply only to projects located within a
30 metropolitan planning organization and shall cease to apply to
31 projects upon the adoption by that metropolitan planning
32 organization of a sustainable communities strategy pursuant to
33 Section 65080 of the Government Code.

34 *(d) This section shall remain in effect only until January 1, 2015,*
35 *and as of that date is repealed, unless a later enacted statute, that*
36 *is enacted before January 1, 2015, deletes or extends that date.*

37 ~~SEC. 9.~~

38 *SEC. 8.* Section 21177 of the Public Resources Code, as
39 amended by Section 11 of Chapter 496 of the Statutes of 2010, is
40 amended to read:

1 21177. (a) An action or proceeding shall not be brought
2 pursuant to Section 21167 unless the alleged grounds for
3 noncompliance with this division were presented to the public
4 agency orally or in writing by any person during the public
5 comment period provided by this division or prior to the close of
6 the public hearing on the project before the issuance of the notice
7 of determination.

8 (b) A person shall not maintain an action or proceeding unless
9 that person objected to the approval of the project orally or in
10 writing during the public comment period provided by this division
11 or prior to the close of the public hearing on the project before the
12 filing of the notice of determination.

13 (c) (1) This division does not require a public agency to consider
14 written materials submitted after the close of the public comment
15 period, unless those materials address any of the following matters:

16 (A) New issues raised in the response to comments by the lead
17 agency.

18 (B) New information released by the public agency subsequent
19 to the release of the ~~proposed final~~ draft environmental impact
20 report, such as new information set forth or embodied in a staff
21 report, proposed permit, proposed resolution, ordinance, or similar
22 legislative document.

23 (C) Changes made to the project after the close of the public
24 comment period.

25 (D) Proposed conditions for approval of a project, mitigation
26 measures for a project included in an environmental document, or
27 proposed findings required by Section 21081 or a proposed
28 mitigation and monitoring program required by paragraph (1) of
29 subdivision (a) of Section 21081.6, where the public agency
30 releases those documents subsequent to the release of the ~~proposed~~
31 ~~final~~ draft environmental impact report.

32 (E) New information that was not reasonably known and could
33 not have been reasonably known during the public comment period.

34 (2) If a lead agency elects not to consider written materials
35 submitted after the close of the public comment period, *except as*
36 *required pursuant to paragraph (1)*, the lead agency is not required
37 to respond to that written material, and that written material shall
38 not be raised in an action or proceeding brought pursuant to Section
39 21167.

1 (d) This section does not preclude any organization formed after
2 the approval of a project from maintaining an action pursuant to
3 Section 21167 if a member of that organization has complied with
4 subdivisions (a) and (b). The grounds for noncompliance may have
5 been presented directly by a member or by a member agreeing
6 with or supporting the comments of another person.

7 (e) This section does not apply to the Attorney General.

8 (f) This section does not apply to any alleged grounds for
9 noncompliance with this division for which there was no public
10 hearing or other opportunity for members of the public to raise
11 those objections orally or in writing prior to the approval of the
12 project, or if the public agency failed to give the notice required
13 by law, *including as required pursuant to Section 21092.2*.

14 (g) This section shall remain in effect only until January 1, 2016,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before January 1, 2016, deletes or extends that date.

17 ~~SEC. 10.~~

18 *SEC. 9.* No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 a local agency or school district has the authority to levy service
21 charges, fees, or assessments sufficient to pay for the program or
22 level of service mandated by this act, within the meaning of Section
23 17556 of the Government Code.

24 ~~SEC. 11.~~

25 *SEC. 10.* This act is an urgency statute necessary for the
26 immediate preservation of the public peace, health, or safety within
27 the meaning of Article IV of the Constitution and shall go into
28 immediate effect. The facts constituting the necessity are:

29 In order to protect the environment and public health at the
30 earliest possible time, it is necessary for this act to take effect
31 immediately.